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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

11 MAURY MONTGOMERY,
12 Petitioner,
13 v.
14 COURT OF APPEAL SECOND
15 APPELLATE DISTRICT,
16 Respondent.

Case No. CV 11-6002-GW (MLG)
ORDER DENYING CERTIFICATE OF
APPEALABILITY

18 Rule 11 of the Rules Governing Section 2254 Cases in the United
19 States District Courts requires the district court to issue or deny
20 a certificate of appealability ("COA") when it enters a final order
21 adverse to the petitioner. Because jurists of reason would not find
22 it debatable whether this Court was correct in its ruling dismissing
23 the petition, a COA is denied.

24 Before a petitioner may appeal the Court's decision denying his
25 petition, a COA must issue. 28 U.S.C. § 2253(c)(1)(A); Fed. R. App.
26 P. 22(b). The Court must either issue a COA indicating which issues
27 satisfy the required showing or provide reasons why such a
28 certificate should not issue. 28 U.S.C. § 2253(c)(3); Fed. R. App.

1 P. 22(b) .

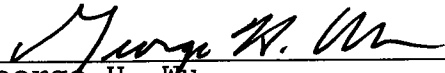
2 The court determines whether to issue or deny a COA pursuant to
3 standards established in *Miller-El v. Cockrell*, 537 U.S. 322 (2003);
4 *Slack v. McDaniel*, 529 U.S. 473 (2000); and 28 U.S.C. § 2253(c). A
5 COA may be issued only where there has been a "substantial showing
6 of the denial of a constitutional right." 28 U.S.C. § 2253 (c)(2);
7 *Miller-El*, 537 U.S. at 330. As part of that analysis, the Court must
8 determine whether "reasonable jurists would find the district court's
9 assessment of the constitutional claims debatable or wrong." *Slack*,
10 529 U.S. at 484, *See also Miller-El*, 537 U.S. at 338.

11 In *Silva v. Woodford*, 279 F.3d 825, 832-33 (9th Cir. 2002), the
12 court noted that this amounts to a "modest standard". (Quoting
13 *Lambright v. Stewart*, 220 F.3d 1022, 1025 (9th Cir. 2000)). Indeed,
14 the standard for granting a COA has been characterized as
15 "relatively low". *Beardlee v. Brown*, 393 F.3d 899, 901 (9th Cir.
16 2004). A COA should issue when the claims presented are "adequate
17 to deserve encouragement to proceed further." *Slack*, 529 U.S. at
18 483-84, (quoting *Barefoot v. Estelle*, 463 U.S. 880, 893 (1983)); *see*
19 *also Silva*, 279 F.3d at 833. If reasonable jurists could "debate"
20 whether the petition could be resolved in a different manner, then
21 the COA should issue. *Miller-El*, 537 U.S. at 330.


22 Under this standard of review, a COA will be denied. In
23 dismissing the petition for writ of habeas corpus, it was found that
24 Petitioner had failed to state a cognizable basis for federal habeas
25 corpus relief and had failed to comply with the Court's order to file
26 a first amended petition. Petitioner cannot make a colorable claim
27 that jurists of reason would find debatable or wrong the decision
28 dismissing the petition without prejudice.

1 Therefore, pursuant to 28 U.S.C. § 2253, the Court DENIES a
2 certificate of appealability.

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4 Dated: November 20, 2011

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6 
7 George H. Wu
United States District Judge

8
9 Presented By:

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11
12 Marc L. Goldman
13 United States Magistrate Judge